Cheng Bee Teik & Ors v Peter a/l Selvaraj & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P–04–93 OF 2002
ABDUL MALEK AHMAD PCA, ARIFIN ZAKARIA AND TENGKU BAHARUDIN SHAH JJCA
6 OCTOBER 2004

Civil Law Act — Damages — Fatal Accident — Loss of earnings — Statutory multiplier — Whether court may interfere with fixed statutory multiplier in calculation of loss of earnings in dependency and personal injury claims — Civil Law Act 1956 ss 7(3)(iv)(d), 28A

Statutory Interpretation — Construction of statutes — Rules of construction — Language of statute — Language of statute imperative — Whether court may disregard mandatory nature of phrase in statute when interpreting such phrase

Tort — Negligence — Road Accident — Accident involving two motorcycles and a motorvan — Whether respondent totally liable — Apportionment of liability

The claim by the appellants arose out of a vehicular accident involving two motorcycles and a motorvan. The first appellant was the rider of the first motorcycle, while the second appellant was the grandmother and dependant of the deceased pillion rider of the first motorcycle. The third appellant was the father and dependant of the deceased rider of the second motorcycle. The first respondent was the driver of the motorvan and the second respondent was the owner thereof. The sessions court found in favour of the appellants and held that the first respondent was totally liable for the accident. This was an appeal by the appellants against the decision of the High Court who allowed in part the appeal by the respondents.

Held, dismissing the appeal on the issue of liability, allowing the appeal on the quantum in part:

(1) The evidence before the court could not support the finding of the sessions court that the first respondent was wholly to blame for the accident. The court agreed with the analysis and reasons given by the High Court that both the appellants as riders of the motorcycles and the first respondent were equally to blame (see para 10).

(2) It was a cardinal principle of the interpretation of statutes that the court should look first to the words of the statute itself, and if these words are plain, it was not permissible to consider what was the intention of the statute or the previous history of the law. The words embodied in ss 7(3) and 28A of the Civil Law Act 1956 ('the Act') were plain that it was not open to the court to explore what was the real intention underlying the said provisions or the previous history of the law on this matter. Therefore, the years of purchase in the present case should rightly be

16, as provided under s 7(3)(iv)(d) of the Act, and no reduction ought to be made on account of contingencies and other vicissitudes of life as was practised prior to the enactment of the present s 7 of the Act (see para 19); *Ibrahim bin Ismail & Anor v Hasnah bte Puteh Imat (as beneficiary and legal mother of Bakri bin Yahya and substituting Yahaya bin Ibrahim) & Anor and another appeal* [2004] 1 MLJ 525 followed.

(3) In the circumstances, the appeal on the quantum was allowed in part, by restoring the awards of the sessions court and accordingly, wherever applicable, the awards of High Court were set aside. Further, the sum of RM10,000 for bereavement was awarded to the second appellant, which she was entitled to under s 7(3A) of the Act (see para 31).

[**Bahasa Malaysia summary**

Tuntutan oleh perayu-perayu timbul daripada satu kemalangan motokar melibatkan dua buah motosikal dan sebuah van. Perayu pertama adalah penunggang motosikal pertama manakala perayu kedua adalah nenek dan dependen kepada penunggang belakang motosikal pertama yang telah mati. Perayu ketiga adalah bapa dan dependen kepada si mati yang menunggang motosikal kedua. Responden pertama adalah pemandu van dan responden kedua adalah pemilik van tersebut. Mahkamah sesyen memutuskan memihak perayu-perayu dan memutuskan responden pertama bertanggungjawab keseluruhannya untuk kemalangan itu. Ini adalah rayuan oleh perayu-perayu terhadap keputusan Mahkamah Tinggi yang membenarkan sebahagian rayuan oleh responden-responden.

Diputuskan, menolak rayuan atas isu liabiliti, membenarkan sebahagian rayuan atas quantum:

(1) Keterangan di hadapan mahkamah tidak menyokong penemuan-penemuan mahkamah sesyen bahawa responden pertama patut dipersalahkan keseluruhannya untuk kemalangan itu. Mahkamah setuju dengan analisis dan sebab-sebab yang dikemukakan oleh Mahkamah Tinggi bahawa kedua-dua perayu sebagai menunggang motosikal-motosikal itu dan responden pertama harus dipersalahkan sama rata (lihat perenggan 10).

(2) Ia adalah prinsip utama dalam tafsiran statut bahawa mahkamah sepatutnya merujuk dahulu kepada perkataan-perkataan statut tersebut, sekiranya perkataan-perkataan itu jelas, ia adalah salah untuk menimbangkan tujuan statut itu atau sejarah undang-undang sebelumnya. Perkataan-perkataan dalam s 7(3) dan 28A Akta Undang-Undang Sivil 1956 ('Akta tersebut') adalah jelas dan ia bukan terpulang kepada mahkamah untuk mengkaji tujuan sebenar di bawah peruntukan atau sejarah undang-undang perkara ini. Oleh itu, tahun perolehan

dalam kes ini sepatutnya 16, seperti yang di peruntukkan dalam s 7(3)(iv)(d) Akta tersebut, dan pengurangan tidak sepatutnya dibuat semasa mempertimbangkan kontingensi-kontingensi dan jatuh bangun dalam kehidupan seperti mana yang dipraktik sebelum penggubalan s 7 Akta tersebut (lihat perenggan 19); *Ibrahim bin Ismail & Anor v Hasnah bte Puteh Imat (as beneficiary and legal mother of Bakri bin Yahya and substituting Yahaya bin Ibrahim) & Anor and another appeal* [2004] 1 MLJ 525 diikut.

(3) Di dalam keadaan ini, rayuan atas kuantum dibenarkan sebahagiannya dengan mengembalikan award mahkamah sesyen dan di mana sesuai, award-award Mahkamah Tinggi diketepikan. Lagipun, jumlah RM10,000 untuk bereavement adalah award kepada perayu kedua yang beliau layak menerima di bawah s 7(3A) Akta tersebut (lihat perenggan 31).]

Notes

For cases on damages for fatal accidents, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 3268–3304.

For cases on road accidents, see 12 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1056–1288.

For cases on rules of construction, see 11 *Mallal's Digest* (4 th Ed, 2002 Reissue) para 1863–1878.

Cases referred to

Chan Chin Ming & Anor v Lim Yok Eng [1994] 3 MLJ 233 (refd)

County Council of Hertfordshire v Rural District Council of Barnet [1902] 2 KB 48 (refd)

Ibrahim bin Ismail & Anor v Hasnah bte Puteh Imat (as beneficiary and legal mother of Bakri bin Yahya and substituting Yahaya bin Ibrahim) & Anor and another appeal [2004] 1 MLJ 525 (folld)

Jamiah bte Holan v Koon Yin [1983] 1 MLJ 103 (refd)

Subramanya Sastry v Sheikh Ghannu AIR 1935 Mad 928 (refd)

Takong Tabari v Government of Sarawak & Ors and another appeal [1998] 4 MLJ 512 (refd)

Young v Bristol Aeroplane Co Ltd [1944] KB 718 (refd)

Legislation referred to

Civil Law Act 1956 s 7, (1), (3), (iv)(d), 3A, 8, 28A

Appeal from: Civil Appeal No 12–128 of 2002 (High Court, Pulau Pinang)

Rhina Bar (Rhina Bar & Associates) for the appellant.

Respondent absent.

Arifin Zakaria JCA (delivering judgment of the court):

[1] This is an appeal by the appellants/plaintiffs against the decision of the learned High Court judge who allowed in part the appeal by the respondents/defendants. When this appeal came up for hearing before us, the respondents and their counsel were absent, even though the notice of hearing had been duly served on the learned counsel. In the circumstances, the appeal proceeded in the absence of the respondents and their counsel. We dismissed the appeal on liability and allowed the appeal on quantum by reinstating the awards of the learned sessions court judge. We now give our reasons.

[2] The claim by the appellants arose out of a vehicular accident involving two motorcycles and a motorvan along Jalan Paya Terubong, Penang. The first appellant was the rider of the motorcycle PDK 3393, while the second appellant was the grandmother and dependant of the deceased pillion rider of the said motorcycle. The third appellant was the father and dependant of the deceased rider of the second motorcycle PDF 8839. The first respondent was the driver of the motorvan PBY 7446 and the second respondent was the owner thereof.

LIABILITY

[3] We shall first deal with the issue of liability. It is not in dispute that the accident occurred at around 11.45pm on the 23 December 1998. At all material times the first plaintiff was riding his motorcycle PDK 3393 with the deceased Ong Sai Hock as pillion and the deceased Mua Yoo Sern was riding motorcycle PDF 8839. They were travelling from Air Itam towards the direction of Paya Terubong when the collision took place with motorvan PBY 7446 coming from the opposite direction. The motorvan was driven by the first respondent as servant and agent of the second respondent. It is the appellants' case that at the time of the collision, the first respondent was attempting to overtake another vehicle ahead of him and in so doing encroached into the right of way of the two motorcyclists and thereby colliding into them.

[4] The first repondent's version of the accident was that the collision occurred as a result of both motorcyclists encroaching into the first respondent's path coming from the opposite direction and at the material time, the two motorcycles were racing with each other and had crossed over the double line in the centre of the road. The learned sessions court judge found in favour of the plaintiffs and held that the first respondent was totally liable for the accident. Her reasons are as follows:

> Di antara versi plaintif dan defendan, versi plaintif lebih berkemungkinan untuk berlaku atas alasan-alasan berikut:
>
> (a) Plaintif tidak ada sebab untuk menceroboh ke laluan defendan. Tidak ada apa-apa kenderaan di hadapan motosikal. Plaintif- plaintif mengambil selekoh kiri. Tidak mungkin plaintif-plaintif hendak

membunuh diri dengan menuju terus ke arah van. Sebaliknya van defendan pertama yang mengambil selekoh kanan dan cuba memotong kenderaan yang ada di hadapannya ada sebab untuk menceroboh ke laluan motosikal.

(b) Versi defendan bahawa motosikal menceroboh ke laluannya tidak disokong oleh rajah kasar. Dari rajah kasar, kedua-dua motosikal jatuh di dalam laluannya sendiri, bukan di laluan van. Serpihan kaca juga hanya di laluan motosikal.

(c) Jika van dipandu satu kaki dari tepi kiri jalan dan van mengelak ke kiri bila motosikal menghala ke arahnya, sudah tentu bila pertembungan berlaku, motosikal-motosikal akan berada di laluan van.

(d) Defendan pertama dan saksi-saksinya tidak 'impress' Mahkamah sebagai saksi yang bercakap benar defendan pertama berbohong mengenai aspek-aspek berikut:

(i) Kewujudan satu lagi van.

(ii) Kerosakan van. Dalam keterangan lisan, defendan pertama kata motosikal langgar tayar van. Tetapi di dalam laporan polis, defendan pertama tidak kata motosikal langgar tayar van. Apa yang ditulis ialah motosikal langgar depan dan belakang van. Sedangkan pegawai penyiasat mengesahkan tiada kerosakan di belakang van.

[5] The English translation of which reads:

Between the plaintiffs' and the defendants' version, the plaintiffs' version is more probable to happen for the following reasons:

(a) The plaintiffs have no reason to encroach onto the defendant's lane. There were no vehicles in front of the motorcycles. The plaintiffs took a left turn. It is impossible that the plaintiffs headed directly towards the van to kill themselves. It was rather the first defendant's van which was negotiating a right turn and trying to overtake the vehicle in front that had reason to encroach onto the motorcycles' lane.

(b) Defendant's version that the motorcycles encroached into his lane is not supported by the sketch plan. From the sketch plan, both the motorcycles fell on their own lane and not on the van's lane. Broken glasses were mostly found on the motorcycles' lane.

(c) If the van were to be driven one foot from the left side of the road and it swerved to the left when the motorcycles were heading towards it, surely when the collision occurred, the motorcycles would have been on the van's lane.

(d) The court was not impressed with the first defendant and his witnesses as they were not witnesses of truth. The first defendant lied on the following aspects:

(i) The existence of another van.

(ii) Damages to the van. In his oral evidence, the first defendant testified that the motorcycle collided into the tyre of the van.

> However in his police report, the first defendant did not state that the motorcycle collided into the tyre of the van. What was written was that the motorcycle collided into the front and rear portion of the van. Whereas, the investigating officer confirmed that there was no damage to the rear of the van. (The translation is ours.)

[6] The learned High Court judge disagreed with the finding of the learned sessions court judge. The learned High Court judge held that the learned sessions court judge erred in making the assumption that there was in existence a motor lorry ahead of the motorvan and the first repondent was in the process of overtaking this motor lorry when the collision took place. He further held that the learned sessions court judge erred in rejecting the evidence of the priest who claimed to be the driver of the motorvan ahead of the motorvan driven by the first respondent. On the evidence of the priest the learned High Court judge observed:

> Whilst the learned sessions court judge had not recorded the occupation of any of the witnesses, the first defendant testified that the driver of the second van was the priest himself and that all of them were going carolling. Surely credence must be given to the evidence of the priest at least to the fact that his van was there. There was no factual finding that the priest who took the oath to testify, had not told the truth. On this main issue the learned sessions judge had erred in finding that there was a lorry present.

[7] The learned High Court judge went on to hold that the learned sessions court judge had erred in finding that the motorvan was overtaking the motor lorry when the accident occurred. Taking into consideration the width of the first respondent's side of the road and the width of the first respondent's motorvan, the learned High Court judge came to his finding that if the first respondent was in fact about to overtake the motor lorry he must have encroached a substantial distance into the path of the motorcyclists. However, he said, there was no such evidence and only the front right side of the motorvan had gone across the central double lines. For those reasons, he dismissed the possibility of a motor lorry being present at the material time which the first respondent was alleged to have attempted to overtake.

[8] The learned High Court judge further held that the learned sessions court judge erred in failing to take into account the admission of the first respondent that he had to proceed nearer to the centre of the road because he could not see the central lines if he had kept to the edge of the road. The first repondent also admitted that his head lamp was weak and not throwing the light far enough for him to see the road which according to him was dark.

[9] The learned High Court judge held that in those circumstances, it was all the more reason for the first respondent to keep to the left edge of the road rather than hugging to the centre of the road. It is also the finding of the learned High Court judge that the point of impact between the motorcycles and the motorvan was at the point marked 'I' in the sketch plan which is

clearly on the first respondent's right of way. He came to this finding on the evidence of the investigating officer that 'I' was not a brake mark but a mark caused by the tyre after it had punctured following the collision between the motorcycles and the motorvan. Having evaluated the evidence before the court, the learned High Court judge concluded:

> It is obvious that both the riders of the motorcycles had encroached into the first defendant's path. The first defendant too could not have been driving from the left edge as he testified. He too must have been keeping more to the centre when the collision occurred. I thus found both the riders of the motorcycle and the first defendant equally liable.

[10] We agreed with the learned High Court judge that the evidence before the court could not support the finding of the learned sessions court judge that the first defendant is wholly to blame for the accident. We agreed with the analysis and reasons given by the learned High Court judge in support of his finding. In the circumstances, we fully endorsed the finding of the learned High Court judge that both the riders of the motorcycles and the first respondent are equally to blame. Accordingly, we affirmed the finding of the learned High Court judge as regard liability.

QUANTUM

[11] Before dealing with the quantum awarded for each of the appellants, we shall first deal with the common issue in this appeal, that is, the 1/4 deduction ordered by the learned High Court judge in respect of loss of future earnings, future cost of prosthesis and loss of dependency. In making the deduction, the learned High Court judge was relying on the decision of this court in *Takong Tabari v Government of Sarawak & Ors and another appeal* [1998] 4 MLJ 512 which followed the majority judgment of the Supreme Court in *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233, which gave the court the right to make such deductions for contingencies and other vicissitudes of life and also taking into account the accelerated payment. The learned High Court judge was obviously bound by the decision of this court in *Takong Tabari*. The learned counsel for the appellant brought to our attention a more recent decision of this court in *Ibrahim bin Ismail & Anor v Hasnah bte Puteh Imat (as beneficiary and legal mother of Bakri bin Yahya and substituting Yahaya bin Ibrahim) & Anor and another appeal* [2004] 1 MLJ 525. which departed from the decision of this court in *Takong Tabari* and the Supreme Court decision in *Chan Chin Ming*.

[12] In *Chan Chin Ming* the plaintiff claimed for loss of support under s 7(3) of the Civil Law Act 1956 ('the CLA') as a result of a fatal accident in which her unmarried 25 year old son was involved. The High Court judge awarded the sum of RM144,000 on the basis of the datum figure or basis figure of RM750 per month, not involving a claim for 'lost years'. One of the issues before the Supreme Court was whether in a claim by a parent for loss of

support in respect of an unmarried son, the statutorily — fixed number of years' purchase was applicable. The majority of the Supreme Court (Edgar Joseph Jr SCJ dissenting) held that the number of years' purchase as provided under s 7(3)(iv)(d) of the CLA ought to be reduced taking into account the general system of law prevailing before the enactment of sub-para (d), that such loss of support would either cease or be reduced considerably on the almost invariable contingency of the subsequent marriage of the unmarried child. Peh Swee Chin, SCJ expressed the view that it was highly improbable that Parliament would depart from the general system of law without expressing its intention with irresistible clearness which was missing in this case. In a strong dissent Edgar Joseph Jr SCJ stated, *inter alia*, that in enacting the detailed provisions of s 7(3)(iv)(d) of the CLA, Parliament had intended to take away the discretion of the court to select the appropriate multiplier in assessing loss of earnings of a deceased person for purposes of a claim for loss of support under s 7(1) of the CLA. Otherwise, the court could rewrite the statute or brush aside explicit statutory provisions and select, in the exercise of its discretion, a suitable multiplier. He reasoned that contingencies such as the probability of the deceased marrying had he not died in the accident and as a result, his contributions for the support of his mother ceasing or being considerably, have been built into the statutory formula of 16 years.

[13] In *Takong Tabari* the appellant, the widow of the deceased, sought damages under both ss 7 and 8 of the CLA. The trial judge deducted 1/3 from the total sum of general damages for loss of dependency under s 7(3)(iv)(d). On appeal, this court, following, *Chan Chin Ming*, upheld the said decision of the trial judge. In *Ibrahim bin Ismail* this court took the opposite view and went on to hold that the majority decision in *Chan Chin Ming* was wrong and that the dissenting judgement of Edgar Joseph Jr SCJ had correctly stated the law. Further, it was held that since this court presently enjoys co-ordinate jurisdiction with that of the former Supreme Court as regard fatal accidents and personal injury claims, therefore, it is open to this court to review the Supreme Court decision in *Chan Chin Ming*. At p 536, it said:

> If a decision — and more so as here a majority decision — of the former Supreme Court is , obviously wrong, then it is our plain duty to say so. It will, with respect, be an abdication of our solemn duty to simply fold our arms in abject submission and permit an erroneous statement of the law to continue to form part of our jurisprudence especially when it results in an injustice to a litigant.

[14] Essentially, the court gave three principal reasons where *Chan Chin Ming* went wrong, namely:

(a) the court in *Chan Chin Ming* failed to apply the appropriate guide to statutory interpretation and hence fell into error. The majority ought to have addressed the object or purpose of the amendment introduced by Parliament by way of ss 7(3)

and 28A of the CLA, which was to address the very high award of damages for personal injuries and death;

(b) it is a cardinal guide of statutory interpretation that when a statute lays down a specific code or formula to meet a particular mischief of the common law, it is not open to the courts to treat themselves as at liberty to continue to apply the common law in disregard of statute;

(c) the majority decision in *Chan Chin Ming* also overlooked the point that the language of the statute is imperative.

[15] We are, therefore, faced with the conflicting decisions of the Supreme Court in *Chan Chin Ming* which is followed by this court in *Takong Tabari* and the opposing view of this court in *Ibrahim bin Ismail*. Ordinarily, this court is bound by the decision of the Supreme Court, which is the apex court. However, since this court is now the final court in fatal accidents and personal injury claims, therefore, it is correct to say that this court is now the apex court for such claims. On the premise that this court stands on equal footing with the then Supreme Court in regard to such claims, the question then arises, whether this court is free to depart from the decision of the Supreme Court when we feel that the Supreme Court was clearly wrong.

[16] In *Young v Bristol Aeroplane Co Ltd* [1944] KB 718 Lord Greene MR, delivering judgment of the court, laid down three exceptions to the rule that the Court of Appeal in England is bound to follow previous decisions of its own as well as those of courts of coordinate jurisdiction. These exceptions are : (1) The court is entitled and bound to decide which of two conflicting decisions of its own it will follow. (2) The court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot, in its opinion, stand with a decision of the House of Lords; (3) The court is not bound to follow a decision of its own if it is satisfied that the decision was given *per incuriam*. In view of the conflicting decisions, discussed earlier, we are of the opinion that this court is not only entitled but duty bound to chose which of the conflicting decisions to follow. This falls within the first exception above.

[17] The issue before us is, what is the proper interpretation that ought to be given to the proviso to s 7(3) of the CLA, which reads:

Provided that:

(1)…

(a) …

(b) …

(c) …

(d) …

(ii) …

(iii) …

(iv) in assessing the loss of earnings in respect of any period after the death of a person where such earnings provide for or contribute to the damages under this section the court shall:

(a) …

(b) …

(c) …

(d) take into account that in the case of a person who was of the age of 30 and below at the time of his death, the number of years' purchase shall be 16; and in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time of his death, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time of death and dividing the remainder by the figure 2.

[18] The purpose of the amendment introduced by way of ss 7(3) and 28A of the CLA, we think, was correctly stated by Gopal Sri Ram JCA in *Ibrahim bin Ismail* at p 534 which reads:

> Now, it is common knowledge that Parliament's purpose was to address the very high award of damages for personal injuries and death. This resulted from three causes. First, the application of a flexible multiplier based on the facts and circumstances of each case. So, one could get a multiplier in excess of 16 years for a plaintiff or deceased who was below the age of majority. Second, the admission of an award for 'lost years'. As a result awards for loss of future earnings were frequently handed down in favour of non-employed injured plaintiffs or the estate of deceased victims. Very young children received huge awards based on their future prospects. In *Yang Salbiah & Anor v Jamil bin Harun* [1981] I MLJ 292, for example, a seven year old girl who had become vegetative was awarded a sum in excess of RM30,000 for loss of future earnings based on a multiplier of 25 years purchase. Again, in *Chiang Boon Fatt v Lembaga Kemajuan Negeri Pahang & Anor, Chin Yee Thow v Lembaga Kemajuan Negeri Pahang & Anor* [1983] 1 MLJ 59, the dependants of a youth who was killed in an accident just as he was about to enter university were awarded RM15,000 as loss of dependency for the lost years on a multiplier of five years purchase based on a predicted income he never earned. Third, a person who had attained or exceeded the age of 55 years could claim for loss of future earnings. Thus, in *Tan Kheng Kuan v Lim Cheng Teik & Ors* [1965] 1 MLJ 116 a 56 year old plaintiff who was working as a trishaw rider was warded loss of future earnings. To emphasise, it is to prevent these types of awards that Parliament acted. That is why you find the fixed formula for the multiplier in the amendments.

[19] It is a cardinal principle of the interpretation of statutes that the court should look first to the words of the statute itself, and if these words are plain, it is not permissible to consider what was the intention of the statute or the previous history of the law. (See *Subramanya Sastry v Sheikh Ghannu* AIR 1935

Mad 928.) In *County Council of Hertfordshire v Rural District Council of Barnet* [1902] 2 KB 48, at p 52 Vaughan Williams LJ stated thus:

> ... It is not denied that the words of s 3 of the Highways and Bridges Act, 1891, are such that, if they are construed in their natural sense, the section must be read as giving to the surveyor of highways the power to make the contract which was made in this case. But it is said that, by so construing them, we should be imputing to the Legislature that in this section they had made an enactment which was not entirely consistent with previous legislation as to the surveyor of highways and the previous history of that office. I do not think that this would be a sufficient reason for not giving to the section the meaning which is plainly conveyed by the words of it. The considerations urged by the counsel for the defendants do not appear to me sufficient to justify us in refusing to construe the section according to what seems to be the manifest intention of the Legislature as expressed by the language which they have used.

[20] We are of the opinion that words embodied in ss 7(3) and 28A of the CLA are plain, and therefore, in line with the above stated authorities, it is not open to this court to explore what is the real intention underlying the said provisions or the previous history of the law on this matter. In this regard, we agree with the view expressed by Gopal Sri Ram JCA in *Ibrahim bin Ismail* at p 535:

> (11) It is this very principle that the majority in *Chan Chin Ming* breached when purporting to interfere with the pre-determined statutory formula applicable in the calculation of loss of earnings in dependency and personal injury claims. With great respect, the majority in *Chan Chin Ming* were exercising legislative and not interpretive jurisdiction.
>
> (12) There is a further point that the majority in *Chan Chin Ming* overlooked. The language of the statute is imperative. It says that 'the number of years' purchase shall be 16. The mandatory tenor of the phrase employed by the Parliament to convey its message excludes any pretended exercise of judicial power to substitute some other multiplier for that intended.

[21] For the above reasons, we agree with the view of this court in *Ibrahim bin Ismail* that the majority view in *Chan Chin Ming* was wrong and that the dissenting judgment of Edgar Joseph Jr SCJ had correctly stated the law. Therefore, following *Ibrahim bin Ismail* the years of purchase in the present case should rightly be 16, as provided under s 7(3)(iv)(d) of the CLA, and no reduction ought to be made on account of contingencies and other vicissitudes of life as was practised prior to the enactment of the present s 7 of the CLA.

[22] We shall next deal with the quantum of awards made in favour of each of the appellants. In this regard, it is pertinent to reiterate the principle to be adopted as stated by Hashim Yeop A Sani J (as he then was) in *Jamiah bte Holan v Koon Yin* [1983] 1 MLJ 103 at p 104 which reads:

As regards the appeal on quantum it is an established approach for a court exercising appellate jurisdiction to adopt that in an appeal on quantum unless it can be shown to the satisfaction of the appellate court that the award is extremely inconsistent with the discernible trend or that the award was made on some misapprehension of facts or on some erroneous assumption of law or fact, the appellate court should not interfere.

[23] The learned sessions court judge in this case, after considering the evidence before her, came to the conclusion that the average income per month of the first appellant was RM930. Her reasons are as follows:

Dengan keterangan yang ada peguam plaintif mencadangkan kehilangan pendapatan sebanyak RM1,321.75 dengan pendarab 16 tahun. Peguam defendan pula mencadangkan tiada awad atas alasan plaintif pertama masih bekerja di tempat yang sama. Kedua-dua hujahan ini ditolak oleh Mahkamah. Jumlah RM1,321.75 itu terlalu tinggi. Jika diteliti baucer gaji, eks P2, selain gaji tetap, plaintif juga dibayar elaun bantuan khas, elaun makanan dan elaun perubatan. Purata elaun lebih masa ialah RM300. Apabila dicampur gaji tetap dan elaun bantuan khas, gaji beliau ialah RM930.

[24] The English translation of which reads:

On the evidence available, the plaintiffs counsel proposed RM1,321,75 as loss of earnings with a multiplier of 16 years. Defendant's counsel proposed that no award should be made on the ground that the first plaintiff is still working at the same place. The court rejected both submissions. The amount of RM1.321.75 is too execessive. If the salary voucher in exh P2 is examined, apart from the basic salary, the plaintiff was also paid special allowance, food allowance and medical allowance. The average overtime allowance is RM300. When the basic salary is added to the special allowance, his salary is RM930. (The translation is ours.)

[25] From our reading of the excerpt of the judgement of the learned sessions court judge, cited above, the word 'gaji' or in English 'salary' appearing in the last sentence should rightly be read as 'pendapatan' or 'income'. The learned High Court judge varied the figure from 'RM930' to 'RM1.321.75' for actual loss for three months. Having considered the matter, it is our finding that the learned sessions court judge had properly come to her finding based on the evidence before her. We found no discernible error committed by learned sessions court judge that warranted any appellate interference.

[26] As regards the second appellant, she awarded the sum of RM300 per month for loss of support. The learned High Court judge varied the amount to RM500 based on the testimony of the second appellant that the deceased gave her RM500 per month and on the vouchers from the employer. The learned sessions court judge came to her assessment based on the evidence of the employer, who said that the deceased's salary was only RM300 per month, and the deceased's salary voucher for the month of November 1998.

[27] In her grounds, she stated:

> Berpandukan baucer gaji bulan November, 1998 dan keterangan majikan adalah berpendapat Mahkamah bahawa gaji simati sebulan ialah RM600.

[28] The English translation of which reads:

> According to the salary voucher for the month of November 1998, and the evidence of the employer the court is of the opinon that the deceased's monthly salary was RM600. (The translation is ours.)

[29] And from that amount, she held that a sum of RM300 per month was given to the second appellant. Taking into account the income of the deceased at the material time, as found by the learned sessions court judge, in our view, that is a fair and reasonable assessment of the contribution by the deceased to the second appellant. In the circumstances, we find no compelling reason for the learned High Court judge to vary the same.

[30] The award of the learned sessions court judge for loss of support in favour of the third appellant in the sum of RM300 per month was affirmed by the learned High Court judge. We agree with the learned High Court judge that there was no sufficient evidence to support the third appellant's claim that the deceased gave him RM800 per month, out of which he gave RM300 to the deceased's mother, and the balance to be spent on himself. Accordingly, the appeal of the third appellant in this regard is hereby dismissed.

CONCLUSION

[31] In the result, we dismissed the appeal on the issue of liability, but allowed the appeal on the quantum in part, by restoring the awards of the learned sessions court judge and accordingly, wherever applicable, the awards of the learned High Court judge were set aside. Further, we awarded the sum of RM10,000 for bereavement to the second appellant, which she is entitled to under s 7(3A) of the CLA. In the circumstances, we made no order as to

[32] Finally, we ordered that the deposit be refunded to the appellants.

Appeal on liability dismissed. Appeal on quantum allowed in part.

Reported by Peter Ling